



## **Town of Moultonborough Zoning Board of Adjustment**

### **Notice of Decision**

### **Request for Variance**

**John C. Mendes & Margaret A. Geanisis/Map 169, Lot 36**

**May 7, 2015**

**Applicant: John C. Mendes & Margaret A. Geanisis**  
**158 Hartwell Ave.**

**Littleton, MA 01469**

**Location: 96 Lake Shore Drive, Moultonborough, NH (Tax Map 169, Lot 36)**

On May 6, 2015, the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of John C. Mendes & Margaret A. Geanisis (hereinafter referred to as the "Applicant" and/or "Owner") to obtain a Variance from MZO Article III. B (3) to expand an existing nonconforming porch 122 sq. ft. in area to accommodate a wheelchair and/or walker with the closest point being 6 ft. from the side property line, where a 20 ft. setback is required on the parcel located in the Residential Agricultural (RA) Zoning District.

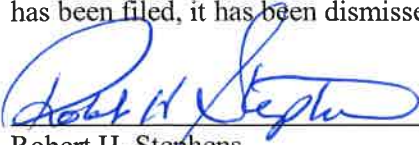
Based on the application, testimony given at the hearings, and additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 96 Lake Shore Drive, Moultonborough, NH (Tax Map 169, Lot 36).
- 2) The applicants are the owners of record for the lot.
- 3) John C. Mendes was present at the Public Hearing to present the application to the Board.
- 4) The lot is located in the Residential Agricultural (RA) Zoning District, and the residential use is a use allowed by right in that district.
- 5) The proposal is to expand an existing nonconforming porch 122 sq. ft. in area to accommodate a wheelchair and/or walker with the closest point being 6 ft. from the side property line, where a 20 ft. setback is required.
- 6) No members of the public wished to speak on the application.
- 7) Granting the Variances would not be contrary to the public interest as the proposed construction will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public because the request would not result in a lessening of the buffers, light or air between abutters since the property is permanently conserved common open space for a development hundreds of feet away.

- 8) Granting the Variances would be consistent with the spirit of the Ordinance because the proposed construction will not alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public because the request would not result in a lessening of the buffers, light or air between abutters since the property is permanently conserved common open space for a development hundreds of feet away.
- 9) By granting the Variances, substantial justice would be done because there is no public benefit to be gained by mandating the dimensional requirements, while the loss to the applicant would be great in that a needed side expansion for access/egress on their own property would be denied.
- 10) Granting the Variances would not diminish the value of surrounding properties as the proposed construction would replace sub-standard, deteriorating construction with new, thereby increasing neighborhood valuations.
- 11) Pursuant to RSA 674:33.V, the Zoning Board of Adjustment may grant a variance from the terms of a zoning ordinance without finding a hardship arising from the condition of a premises subject to the ordinance when reasonable accommodations are necessary to allow a person or persons with a recognized physical disability to reside in or regularly use the premises, provided that: (a) Any variance granted under this paragraph shall be in harmony with the general purpose and intent of the zoning ordinance. (b) In granting any variance pursuant to this paragraph, the zoning board of adjustment may provide, in a finding included in the variance that the variance shall survive only so long as the particular person has a continuing need to use the premises. The applicant averred that a member of the family did in fact have said physical disability, therefore the hardship criterion does not apply in this case.
- 12) The Zoning Board of Adjustment chose to place a condition on the variance that the proposed ramp and deck shall not in the future vest rights to use the footprint for any requests for the expansion of the nonconforming dwelling structure.
- 13) On May 6, 2015, the Zoning Board of Adjustment voted by a vote of five (5) in favor (Stephens, Nolin, St. Peter, Jenny, Onthank) and none (0) opposed to grant the request for the variance to expand the existing nonconforming porch 122 sq. ft. in area to accommodate a wheelchair and/or walker with the closest point being 6 ft. from the side property line, subject to a condition that the granting of the variance for the ramp and deck shall not in the future vest rights to use the footprint for any requests for the expansion of the nonconforming dwelling structure, and further to close the Public Hearing, and further moved to direct Staff to draft a formal Notice of Decision for review and approval for signing at the next meeting.

The Board of Adjustment, on May 20, 2015, approved this formal Notice of Decision language and authorized the Chairman to sign the Notice of Decision and send to the applicant and place same in the case file by a vote of three (3) in favor (Stephens, Nolin, St. Peter) and two (2) abstentions (Zewski, Bickford) as they were not present for the hearing on May 6, 2105.

The decision made to grant the variance on May 6, 2015, shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.



Robert H. Stephens  
Chairman, Zoning Board of Adjustment

Date 5-21-15